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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/974,634	10/09/2001	Mengtao Pete He	29930.5300	9940
7590	09/08/2004			
Damon L. Boyd Snell & Wilmer L.L.P. 400 East Van Buren Phoenix, AZ 85004-2202			EXAMINER VO, HAI	
			ART UNIT 1771	PAPER NUMBER

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/974,634 Hai Vo	HE ET AL. Art Unit 1771
		D/S

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 02 July 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 3 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

1. The art rejections are maintained.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 3 is rejected under 35 U.S.C. 102(b) as being anticipated by Smith (US 4,735,626) substantially as set forth in the 03/31/2004 Office Action.

The art rejections have been maintained for the following reasons:

Applicants argue that Smith does not disclose a wick but rather a porous synthetic polymer support impregnated with a fragrance. The porous wicks in accordance with the present invention is comprised of a polymeric material such as high density polyethylene (page 6, specification). The porous support unit of Smith is made of high density polyethylene having the pore size, porosity within the claimed ranges. Therefore, it is not seen that the porous support unit of Smith would have performed differently than the wick of the present invention when they are both fabricated from the same polymeric material and possess similar pore size and porosity.

Applicants argue that Smith does not disclose a device that wicks material from a reservoir, that transports vaporizable material, or that can be replenished with fragrance oil as it releases the fragrance material to the

surrounding environment. The arguments are not found persuasive for patentability since they are not commensurate in scope with the claim.

Nothing in the claim is specific about the device comprising a reservoir that is replenished with fragrance oil as argued by Applicants. The claim recites the wick material for use in combination with an air freshening device; however, the claim is completely silent as to the structure of the air freshening device. Hence, the presently claimed subject matter does not exclude Smith. Further, Applicants argue that the no-drip property is not necessarily present because Smith discloses that one must stop loading the support unit at the point it would drip (column 5, lines 37-46). The examiner disagrees. The claim recites that the vaporizable material does not leak from the wick material when the wick material is inverted. To the examiner, the passage at column 5, lines 37-46 simply suggests that if the content of the impregnated fragrance used is higher than 2.23 g, the fragrance will leak from the support unit. Smith clearly does not disclose the fragrance leaks from the wick material when the wick material is inverted. Smith discloses when the content of the impregnated fragrance is higher than 2.23g, the fragrance will leak from the support unit. The claim recitation and the reference disclosure are directed to two totally different stories. Therefore, it is technically incorrect to conclude that the no-drip property is not necessarily present based on the reference disclosure at column 5, lines 37-47. In addition, it appears that the air freshener unit meets all the structural limitations and chemistry as required

in the claims, i.e., the pore size, void volume ratio and transfer rate within the claimed ranges. The pore size, void volume ratio and transfer rate of fragrance are altogether critical in attaining the non-leakage of the fragrance from the impregnated unit. It is the examiner's position that the fragrance does not substantially inherently leak from the impregnated unit so as to enable the porous support unit to meet the pore size, void volume ratio and transfer rate within the claimed ranges. It seems from the claim, if one meets the structure recited, the properties must be met or Applicant's claim is incomplete. This is in line with *Ex parte Tummers et al.* 137 USPQ 444 which holds that if the chemical composition of the claimed article of manufacture recited in the claims is the same as the identical structure of the prior art, it is immaterial that the applicant recognized different advantages flowing therefrom than did the prior art. Finally, Applicants provide a declaration under 37 CFR 1.132 to demonstrate that substantially improved results are obtained from a wick made according to the claimed ranges in contrast to the results obtained using wick with porosity outside the claimed range. The examiner wishes to point out that the declaration under 37 CFR 1.132 can not be relied on to overcome the anticipation of the presently claimed subject matter. Since the pore size of the porous high density polyethylene is within the claimed range (30% to 55%) and the release of the fragrance is on target (46 mg/hour), the declaration is found irrelevant to the issues of

anticipation of the claimed subject matter. Accordingly, the art rejections are thus sustained.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (571) 272-1485. The examiner can normally be reached on M,T,Th, F, 7:00-4:30 and on alternating Wednesdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hai Vo

HV



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